



October 26, 1999

Mr. John Steiner  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR99-3026

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128890.

The City of Austin (the "city") received a request for information concerning the police department's recruiting process, as well as certain information about the requestor. You state that the requestor's evaluations and commendations are available to her. *See* Local Gov't Code § 143.089(e). You also state that, except for a draft audit report, all of the remaining responsive information is located in police department files.<sup>1</sup> You say that you have referred the requestor to the city's civil service commission for responsive information in her personnel file. *See id.* § 143.089(g). You assert that a draft report of the audit of the recruiting division of the police department is excepted from required public disclosure based on section 552.111 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

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<sup>1</sup>We note that the city submitted to this office documents labeled as excepted from required public disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The city does not specifically ask this office to rule under these provisions. Section 143.089(g) makes confidential information maintained by the city police department for its own use. *See City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied). Therefore, to the extent the requested information consists of information from city police department files, the city must not release the information to the public. Gov't Code § 552.101.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking function, however, does not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See id.* at 5-6; *see also Garland v. Dallas Morning News*, No. 05-95-01350-CV (Tex. App.—Dallas May 13, 1998, n.w.h.) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1996), *writ denied per curiam*, 41. Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to making of new policy but merely implement existing policy). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* The exception also protects preliminary drafts of a document involving an agency policy matters and any comments or other notations on the drafts because they necessarily represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. *See* Open Records Decision No. 559 (1990).

You state that the requested audit report, which we note consists of 24 pages, is currently in draft form. We believe the report concerns the city's policy matters. We, therefore, conclude that the city may withhold from disclosure the draft of the audit report. *See* Open Records Decision No. 631 (1995). In addition, we have marked portions of the attachments to the report that contain advice, opinion and recommendation relating to policymaking. The city may withhold these marked portions from public disclosure based on section 552.111. As the city has not established that section 552.111 applies to the remaining information, it must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/ljp

Ref.: ID# 128890

Encl. Submitted documents

cc: Ms. Roxanne Valdez  
Austin Police Department  
715 East 8<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)